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July 3, 2023

Mr. David J. Smith, Clerk of Court
U.S. Court of Appeals for the Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, GA 30303

**Re: *Eknes-Tucker v. Governor of the State of Alabama*, No. 22-11707
Response to Plaintiffs' Rule 28(j) Supplemental Authority Letters
Concerning *L.W. v. Skrmetti*, No. 3:23-cv-376 (M.D. Tenn. June 29, 2023)
and *Doe v. Thornbury*, No. 3:23-cv-230 (W.D. Ky. June 28, 2023).**

Dear Mr. Smith:

At least the *L.W.* and *Doe* courts cited *Dobbs*. *L.W.*Op.28; *Doe*.Op.7. That's more than can be said of other recent decisions brought to this Court's attention. But the courts either fundamentally misunderstood the Supreme Court's decision, the treatments at issue, or both.

Following erroneous reasoning from an Eighth Circuit preliminary injunction panel, both district courts concluded that prohibiting transitioning treatments for minors triggers heightened scrutiny "[b]ecause the minor's sex at birth determines whether or not the minor can receive certain types of medical care under the law" and therefore "discriminates on the basis of sex." *L.W.*Op.27 (quoting *Brandt v. Rutledge*, 47 F.4th 661, 669 (8th Cir. 2022)); *Doe*.Op.5 (same).

To make this reasoning work, the courts had to lump the treatments at issue into one category—"hormone therapies," *L.W.*Op.27 n.27, or transitioning "treatments," *Doe*.Op.7. But this reasoning breaks down the moment one considers that there are three *separate* transitioning treatments at issue.

The first is puberty blocker transitioning treatment. Puberty blockers work the same way in males and females. Sex has no bearing on their prescription or dosage, whether for treating precocious puberty or for transitioning. Thus, banning their use

in sex-modification procedures does not draw any line based on sex. Girls and boys are treated identically: both may receive puberty blockers to treat precocious puberty, but not to transition. Rational-basis review thus applies.

The second treatment is testosterone transitioning treatment. Unlike puberty blockers, testosterone transitioning treatments can be used only in females. That is, giving testosterone to a female can be a transitioning treatment because it will lead to male characteristics (i.e., lead to transitioning), while giving testosterone to a male will not lead to female characteristic (i.e., will not lead to transitioning).

The third treatment is estrogen transitioning treatment, which works the inverse as testosterone transitioning treatment. It can be given only to males to transition.

Testosterone transitioning treatments and estrogen transitioning treatments are thus “medical procedure[s] that only one sex can undergo,” *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2245-46 (2022)—same as abortions or surgical castration. Accordingly, rational-basis review applies.

Respectfully submitted,

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s/ Edmund G. LaCour Jr.

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CERTIFICATE OF COMPLIANCE

1. I certify that this document complies with the type-volume limitations set forth in Fed. R. App. P. 28(j) and 11th Cir. R. 28, I.O.P. 6. The document contains 347 words, including all headings, footnotes, and quotations, and excluding the parts of the brief exempted under Fed. R. App. P. 32(a)(7)(B)(iii).

2. In addition, this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed on July 3, 2023, using the CM/ECF Document Filing System, which will send notification of such filing to all noticed parties.

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